

**REMARKS/DISCUSSION:**

This Response E is being filed within the shortened statutory period for response that ends on August 18, 2009. Accordingly, no petition for extension of time is required.

This Response E is being filed in conjunction with an RCE and an IDS.

By this Response E claims 15-17, 20-21, and 30 are pending in this application. Claims 28-29 have been withdrawn.

Amendment and/or cancellation (or withdrawal) of claims is not to be construed as a dedication to the public of any of the subject matter of the claims previously presented. Further, Applicant(s) reserves the right to prosecute the subject matter of such claims in continuation and/or divisional applications.

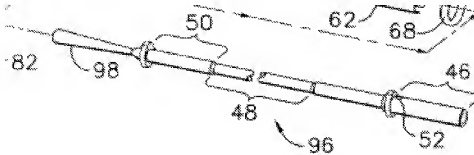
Applicant has carefully studied the outstanding Office Action. This Amendment is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

**Rejection under 35 U.S.C. § 102(b)**

Claims 15-17, 20, 21 and 30 stand rejected as being anticipated by Haibel, Jr. et al. (US 6,254,623) as set forth in the office action.

Regarding claim 15, the Examiner states that Haibel discloses an ultrasonic blade (96) having more than one-half one-half wave segments comprising a first portion (50), a second portion (98) and a third portion (48 and 46) wherein the first portion comprises a first cross sectional area and the second and third portions comprise a second cross-section area less than the first cross-sectional area and wherein the first portion comprises a distal end and a proximal end, the

distal end connected to the second portion and the proximal end connected to the third portion. (See portion of Fig. 1 reproduced below).



The Examiner further states that Haibel also discloses the third portion (48 & 46) defines a first anti-node and the second portion (98) defines a second anti-node, which defines a one-half wave segment. Applicant respectfully traverses the Examiner's rejection.

Claim 15 recites "An ultrasonic surgical blade comprising an ultrasonic blade having more than one half-wave segments". The Examiner acknowledges that Haibel discloses more than one half wave segments  $n\lambda/2$  (col. 4, ll. 64-66). For the sake of argument, Applicant makes the assumption that  $n$  is greater than one (1) in order for Haibel to disclose more than one half-wave segments.

Claim 15 further recites "the first portion comprises a distal end and a proximal end, the distal end is connected to the second portion and the proximal end is connected to the third portion and wherein the third portion defines a first anti-node and the second portion defines a second anti-node and the first and second anti-nodes define the one-half wave segment." (Emphasis added). For this claim element, the Examiner again points to Haibel and notes that the third portion (48 & 46) defines a first anti-node and the second portion (98) defines a second anti-node, which defines a one-half wave segment (see Fig. 1 above, effectively, the entire waveguide is a one-half wave segment).

So, in one instance, the Examiner argues that Haibel discloses an ultrasonic waveguide having more than one half-wave segments (to anticipate one portion of claim 15), but, in another instance the Examiner argues that Haibel discloses an ultrasonic waveguide having a single one-half wave segment (to anticipate another portion of claim 15). The Examiner cannot have it both ways and interpret Haibel inconsistently in order to invalidate claim 15 (and for that matter, independent claims 16 and 30).

In essence, the Examiner cannot use Haibel to invalidate a waveguide having more than one one-half-wave segments, and then turn around and declare that the waveguide disclosed in Haibel defines only one-half-wave segment. The Examiner must consistently apply the Haibel reference, and when done so properly, the Haibel reference does not anticipate independent claims 15, 16 and 30.

Alternatively, if the Examiner insists that the third portion (48 & 46) defines a first anti-node (col. 4, ll 60-62) and the second portion (98) defines a second anti-node (col. 5, ll 44-47), which define a one-half wave segment (see pg. 3, May 18, 2009 OA), then Haibel does not disclose an ultrasonic blade having more than one, one-half-wave segment. To argue otherwise, the Examiner incorporates circular reasoning, which is improper.

Claims 17 and 20-21 are dependent upon independent claims 16 and 15, and based on dependency are also patentable over the cited art.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

### **Conclusion**

Applicant submits that in view of the discussion, the objections and rejections under 35 U.S.C. § 102 have been overcome and that the invention is now patentable over the cited prior. The Examiner is respectfully requested to reconsider all rejections and pass this case to issue.

Should any minor points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, which may be required to Account No. 10-0750/END-5009USNP/VEK.

Respectfully submitted,

/Verne E. Kreger, Jr., Reg. #35231/  
Verne E. Kreger, Jr.

Verne E. Kreger, Jr.  
Attorney for the Applicant(s)  
Reg. No. 35,231

Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933-7003  
513 337-3295  
DATED: August 18, 2009